

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**45 MISC.CIVIL APPLICATION NO.143 OF 2022
WITH CA/5852/2023 IN MCA/143/2022**

**JYOTISHNA VINAYAK KALE ALIAS JYOTISHNA JANARDAN PATKI
VERSUS
VINAYAK VENKATRAO KALE**

Mr. S.S. Gangakhedkar, Advocate for the applicant.
Mr. S.K. Chavan, Advocate for the respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 19.10.2023**

PC :-

01. Heard learned Advocates for the parties for sometime. This application is filed seeking transfer of proceeding bearing HMP No.245 of 2018 pending before Civil Judge, Senior Division, Parbhani to Family Court, Pune and also the proceedings bearing No. PWDVA No.44 of 2019 pending before the JMFC, Parbhani to the court of JMFC, Pune. It is reported that Hindu Marriage Petition is now transferred to Family Court newly established at Parbhani bearing No. Petition A 43/2020.

02. The facts in short are that the applicant wife filed HMP No.245 of 2018 in the Court at Parbhani seeking divorce under section 13(1)(i-a) of the

Hindu Marriage Act. Thereafter, two more proceedings are filed by her in the Court at Parbhani against the respondent/husband and his parents at Parbhani. There are three proceedings pending which are at the instance of the applicant. One more proceeding is pending at Parbhani instituted by the husband against the wife for termination of pregnancy. The wife thereafter shifted to Pune and secured a job. The appointment letter dated 09.03.2022 is on record showing that she is appointed as Senior Test Engineer in Xoriant Solutions Pvt. Ltd. having package of 18,50,000/- per annum. The wife is thus presently in Pune. She also got admission of her son in Pune in the year 2022, who is reported to be studying in 10th standard. In view of this now she has filed this application seeking transfer of the proceedings. During the course of argument it is reported that the applicant has now resigned from the job.

03. The learned Advocate for the applicant vehemently argued that the applicant is residing at Pune with her parents and distance between Parbhani and Pune is 380 kms. It is difficult for her to undertake such a journey for the Court proceeding. Considering that, she has urged that her convenience should be seen. The learned Advocate for the applicant relied

upon judgment of the Hon'ble Supreme Court in the case of (i) N.C.V Aishwarya Vs.A.S. Saravana Karthik Sha reported in AIR 2022 S.C. 4318 and judgments of this Court in (ii) Devika Dhiraj Patil Nee Devika Jayprakash Buttepatil Vs. Dhiraj Sunil Patil [MCA No.167 of 2023] and (iii) Sow. Pallavi w/o. Manojkumar Panchmukh Vs. Manojkumar s/o. Machhindra Panchmukh [MCA No.103 of 2020].

04. The learned Advocate for the respondent vehemently opposes the application. He submits that the proceeding is filed by the wife herself in the year 2018. Since 2019 the HMP is posted for evidence. However, till today the wife has not filed evidence affidavit on record. It is the wife who is avoiding to appear before the Court and is prolonging the matter. He submits that other two criminal cases are filed. In those applications there is no such application filed by the applicant. By way of this application, she only wants HMP and application under section PWDVA be transferred. Thus, at the same time she wants the proceedings to go on at two different places. It clearly shows that application is filed only for the purpose of harassment. He further pointed out a letter of appointment and submits that she is in sound financial position. Her son is in 10th standard and there is nothing to show as to why it

is difficult for her to travel such a distance that too on the background that she herself has not taken any steps in the proceedings initiated by her in Parbhani. If the proceeding is transferred, even the witnesses will have to travel to Pune and it will cause inconvenience to the Court proceeding than the applicant and he thus prays for rejection of the application.

05. This Court has considered the submissions and documents on record. It is clear that in this case the applicant is well positioned lady fetching handsome income. Though it is submitted that she has resigned from the job, this fact also shows that she is a competent lady who is sure of getting better job and therefore she has resigned and does not require any financial assistance. Certainly, this is not a case where she requires transfer as she can afford to travel. A letter is also produced on record by the respondent showing that the son who was studying in Parbhani is taken to Pune by herself by obtaining transfer certified by misleading the authorities. So far as judgment in the case of **N.C.V. Aishwarya (Supra)** is concerned, the Hon'ble Supreme Court in Para 9 has observed as below :-

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the

economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio- economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

. Considering para 9 it is clear that the Court has to consider the economic soundness of both the parties, social strata of the spouses and their behavioural pattern, their standard of life etc. In the case of Devika Dhiraj Patil (Supra), this Court had passed order by relying on the judgment in the case of N.C.V. Aishwarya (Supra) and in the facts of the case has transferred the proceeding as per request of the wife. In the case of Pallavi Panchmukh (Supra) also the Court by considering the facts in the case has transferred the case.

06. This Court in the facts of this case feels that the transfer of the proceedings is not necessary, specially looking to the fact that from 2019 till 2022 the wife has not taken any steps to produce her evidence and now she is praying for transfer of the proceeding to Pune. From this conduct it appears that even at Pune she may not co-operate the Court and may protract the litigation. As two more cases are still pending at Parbhani, there is no propriety in keeping to proceedings at Parbhani and to transfer only two other

proceeding to Pune. That will certainly cause inconvenience to both the parties.

07. Considering all the above, this Court finds that no case is made out to allow the application. The application stands dismissed with costs.

08. It is expected of the parties to co-operate the Court in proceedings and the Court is expected to dispose of the matters as early as possible and preferably within a period of one year from today.

09. In view of dismissal of the Misc. Civil Application, connected Civil Application for directions, does not survive and disposed off accordingly.

[KISHORE C. SANT, J.]